DRAFT March 7, 2003

**Subject to Legal Review for Clarity and Consistency**

# U.S. B Singapore Free Trade Agreement
# Text of the Agreement

*This file contains text that is subject to modification and the legal scrubbing process.*

# CHAPTER 15
# INVESTMENT

## SECTION A – DEFINITIONS

### ARTICLE 15.1: DEFINITIONS

For purposes of this Chapter, it is understood that:

**central level of government** means:

(a) for the United States, the federal level of government; and

(b) for Singapore, the national level of government;

**Centre** means the International Centre for Settlement of Investment Disputes ("ICSID") established by the ICSID Convention;

**claimant** means an investor of a Party that is a party to an investment dispute with the other Party;

**covered investment** means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

**disputing parties** means the claimant and the respondent;

**disputing party** means either the claimant or the respondent;

**enterprise** means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization; and a branch of an enterprise;

**enterprise of a Party** means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

**freely usable currency** means "freely usable currency" as determined by the International Monetary Fund under its Articles of Agreement;

**government enterprise** means "government enterprise" as defined in Chapter 12;

**ICSID Additional Facility Rules** means the *Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes*;

**ICSID Convention** means the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, done at Washington, March 18, 1965;

**investment** means every asset owned or controlled, directly or indirectly, by an investor, that has the characteristics of an investment.[15-1] Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments, and loans;[15-2]

(d) futures, options, and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to applicable domestic law;[15-3] [15-4] and

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[15-1]Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take. The characteristics of an investment include the commitment of capital, the expectation of gain or profit, or the assumption of risk.

[15-2]Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

[15-3]Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the domestic law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

[15-4]The term "investment" does not include an order or judgment entered in a judicial or administrative action.

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.

**investment agreement**[15-5] means a written agreement that takes effect on or after the date of entry into force of this Agreement between a national authority[15-6] of a Party and a covered investment or an investor of the other Party (i) that grants rights with respect to natural resources or other assets that a national authority controls, and (ii) that the covered investment or the investor relies on in establishing or acquiring the covered investment;

**investment authorization**[15-7] means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of the other Party;

**investor of a non-Party** means, with respect to a Party, an investor that is seeking to make, is making, or has made an investment in the territory of that Party, that is not an investor of either Party;

**investor of a Party** means a Party or a national or an enterprise of a Party that is seeking to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his/her dominant and effective nationality;

**monopoly** means "monopoly" as defined in Chapter 12;

**New York Convention** means the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York, June 10, 1958;

**non-disputing Party** means the Party that is not a party to an investment dispute;

**protected information** means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law;

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[15-5]Actions taken by an agency of a Party to enforce laws of general application such as competition law do not come within this definition.

[15-6]For purposes of this definition, "national authority" means (1) for Singapore, a ministry or other government body that is constituted by an Act of Parliament; and (2) for the United States, an authority at the central level of government.

[15-7]Actions taken by an agency of a Party to enforce laws of general application such as competition law do not come within this definition.

**regional level of government** means, for the United States, a state of the United States, the District of Columbia, or Puerto Rico. For Singapore, "regional level of government" is not applicable, as Singapore has no government at the regional level;

**respondent** means the Party that is a party to an investment dispute;

**Secretary-General** means the Secretary-General of ICSID;

**tribunal** means an arbitration tribunal established under Article 15.18 or 15.24; and

**UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law.

## SECTION B – INVESTMENT

### ARTICLE 15.2: SCOPE AND COVERAGE

This Chapter applies to measures adopted or maintained by a Party relating to:

(a) investors of the other Party;

(b) covered investments; and

(c) with respect to Articles 15.8 and 15.10, all investments in the territory of the Party.

### ARTICLE 15.3: RELATION TO OTHER CHAPTERS

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provision of that cross-border service. This Chapter applies to that Party's treatment of the posted bond or financial security.

3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 10.

## ARTICLE 15.4: NATIONAL TREATMENT AND MOST-FAVORED-NATION TREATMENT

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments. The treatment each Party shall accord under this paragraph is "national treatment."

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a state, territory or possession, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state, territory, or possession, to investors, and to investments of investors, of the Party of which it forms a part.

3. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments. The treatment each Party shall accord under this paragraph is "most-favored-nation treatment."

4. Each Party shall accord to investors of the other Party and to their covered investments the better of national treatment or most-favored-nation treatment.

## ARTICLE 15.5: MINIMUM STANDARD OF TREATMENT[8]

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.

(a) The obligation in paragraph 1 to provide "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory

[15-8] Article 15.5 is to be interpreted in accordance with the letter exchange on customary international law.

proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) The obligation in paragraph 1 to provide "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

4. Without prejudice to paragraph 1 and notwithstanding Article 15.12(5)(b), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

5. Paragraph 4 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 15.4(1) and (2) but for Article 15.12(5)(b).

**ARTICLE 15.6: EXPROPRIATION**[15-9]

1. Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation") except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2, 3, and 4; and

(d) in accordance with due process of law and Article 15.5(1), (2), and (3).

2. Compensation shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken ("the date of expropriation");

[15-9] Article 15.6 is to be interpreted in accordance with the letter exchange on customary international law and the letter exchange on expropriation, and is subject to the letter exchange on land expropriation.

(c) be fully realizable and freely transferable; and

(d) not reflect any change in value occurring because the expropriatory action had become known before the date of expropriation.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"), or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter 16 of this Agreement.

**ARTICLE 15.7: TRANSFERS**[15-10]

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract entered into by the investor, or the covered investment, including payments made pursuant to a loan agreement;

[15-10] Article 15.7 is subject to Annex 15-A.

(e) payments made pursuant to Article 15.6 and Article 15.5(4); and

(f) payments arising under Section C.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in an investment authorization or other written agreement between the Party and a covered investment or an investor of the other Party.

4. Notwithstanding paragraphs 1, 2, and 3, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its law relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offenses; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

**ARTICLE 15.8: PERFORMANCE REQUIREMENTS**[15-11]

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

[15-11] Article 15.8 is subject to Annex 15-B and Annex 15-C.

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer a particular technology, production process, or other proprietary knowledge to a person in its territory; or

(g) to supply exclusively from the territory of the Party the goods that it produces or the services that it supplies to a specific regional market or to the world market.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3. (a) Nothing in Paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(b) Paragraph 1(f) does not apply:

(i) when a Party authorizes use of an intellectual property right in accordance with the provisions of Article 16.7(6), and to measures requiring the

disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.

(c) Paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;

(ii) necessary to protect human, animal, or plant life or health; or

(iii) related to the conservation of living or non-living exhaustible natural resources;

provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on investment or international trade.

(d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to government procurement.

(f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.

## ARTICLE 15.9: SENIOR MANAGEMENT AND BOARDS OF DIRECTORS

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

**ARTICLE 15.10: INVESTMENT AND ENVIRONMENT**

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

**ARTICLE 15.11: DENIAL OF BENEFITS**

A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if:

(a) investors of a non-Party own or control the enterprise and the denying Party:

(i) does not maintain diplomatic relations with the non-Party; or

(ii) adopts or maintains measures with respect to the non-Party or an investor of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments; or

(b) the enterprise has no substantial business activities in the territory of the other Party, and investors of a non-Party, or of the denying Party, own or control the enterprise.

**ARTICLE 15.12: NON-CONFORMING MEASURES**

1. Articles 15.4, 15.8, and 15.9 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex I,

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 15.4, 15.8, and 15.9.

2. Articles 15.4, 15.8, and 15.9 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to Annex II.

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Article 15.4 does not apply to any measure that is an exception to, or derogation from, the obligations under Article 16.1(3) as specifically provided for in that Article.

5. Articles 15.4 and 15.9 do not apply to:

(a) government procurement; or

(b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

## ARTICLE 15.13: SPECIAL FORMALITIES AND INFORMATION REQUIREMENTS

1. Nothing in Article 15.4(1) and (2) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 15.4, a Party may require an investor of the other Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

## SECTION C – INVESTOR-STATE DISPUTE SETTLEMENT

### ARTICLE 15.14: CONSULTATION AND NEGOTIATION

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.

### ARTICLE 15.15: SUBMISSION OF A CLAIM TO ARBITRATION[15-12]

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section B,

(B) an investment authorization, or

(C) an investment agreement; and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section B,

(B) an investment authorization, or

(C) an investment agreement; and

[15-12] Article 15.15 is subject to the letter exchange on land expropriation.

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

(c) For greater certainty, a claimant may submit to arbitration under this Section a claim that the respondent has breached an obligation under Section B through the actions of a designated monopoly or a government enterprise exercising delegated governmental authority as described in Articles 12.3(1)(c)(i) and 12.3(2)(b) respectively.

(d) Without prejudice to Article 10.1(2), no claim may be submitted under this Section that alleges a violation of any provision of this Agreement other than an obligation under Section B or the letter exchange on land expropriation.

2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent"). The notice shall specify:

(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

(d) the relief sought and the approximate amount of damages claimed.

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the disputing Party and the Party of the claimant are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the disputing Party or the Party of the claimant, but not both, is a party to the ICSID Convention;

(c) under the UNCITRAL Arbitration Rules; or

(d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):

(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;

(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent; or

(d) referred to under any other arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent.

5. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

6. The claimant shall provide with the notice of arbitration referred to in paragraph 4:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint the claimant's arbitrator.

**ARTICLE 15.16: CONSENT OF EACH PARTY TO ARBITRATION**

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and

(b) Article II of the New York Convention for an "agreement in writing."

**ARTICLE 15.17: CONDITIONS AND LIMITATIONS ON CONSENT OF EACH PARTY**

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 15.15(1) and knowledge that the claimant (for claims brought under Article 15.15(1)(a)) or the enterprise (for claims brought under Article 15.15(1)(b)) has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

(b) the notice of arbitration referred to in Article 15.15(4) is accompanied,

(i) for claims submitted to arbitration under Article 15.15(1)(a), by the claimant's written waiver, and

(ii) for claims submitted to arbitration under Article 15.15(1)(b), by the claimant's and the enterprise's written waivers

of any right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 15.15.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 15.15(1)(a)) and the claimant or the enterprise (for claims brought under Article 15.15(1)(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

**ARTICLE 15.18: SELECTION OF ARBITRATORS**

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

4. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a claimant referred to in Article 15.15(1)(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 15.15(1)(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

**ARTICLE 15.19: CONDUCT OF THE ARBITRATION**

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 15.15(3)(b), (c), or (d). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of either Party or of a third State that is a party to the New York Convention.

2. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. The tribunal shall have the authority to accept and consider *amicus curiae* submissions from any persons and entities in the territories of the Parties and from interested persons and entities outside the territories of the Parties.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 15.25.

(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the

respondent to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration referred to in Article 15.15(4), the date the tribunal fixes for the respondent to submit its response to the amendment).

(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

(c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

(d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in the following paragraph.

5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period of time, which may not exceed 30 days.

6. When it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorneys' fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

8. A tribunal may order an interim measure of protection to preserve the rights of a

disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 15.15. For purposes of this paragraph, an order includes a recommendation.

9. (a) In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing an award on liability, transmit its proposed award to the disputing parties and to the non-disputing Party. Within 60 days after the tribunal transmits its proposed award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed award. The tribunal shall consider any such comments and issue its award not later than 45 days after the expiration of the 60-day comment period.

(b) Subparagraph (a) shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been made available pursuant to paragraph 10.

10. If a separate multilateral agreement enters into force as between the Parties that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 15.25 of this Section in arbitrations commenced after the appellate body's establishment.

**ARTICLE 15.20: TRANSPARENCY OF ARBITRAL PROCEEDINGS**

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and make them available to the public:

(a) the notice of intent referred to in Article 15.15(2);

(b) the notice of arbitration referred to in Article 15.15(4);

(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 15.19(2) and (3) and Article 15.24;

(d) minutes or transcripts of hearings of the tribunal, where available; and

(e) orders, awards, and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 21.2 or Article 21.4.

4. Protected information shall, if such information is submitted to the tribunal, be protected from disclosure in accordance with the following procedures:

(a) Subject to paragraph 4(d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with paragraph 4(b).

(b) Any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal.

(c) A disputing party shall, at the same time that it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Party and made public in accordance with paragraph 1.

(d) The tribunal shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may (i) withdraw all or part of its submission containing such information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and paragraph 4(c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted the information.

5. Nothing in this Section authorizes a respondent to withhold from the public information required to be disclosed by its laws.

**ARTICLE 15.21: GOVERNING LAW**

1. Subject to paragraph 2, a tribunal shall decide the issues in dispute related to an alleged breach of an obligation in Section B in accordance with this Agreement and applicable rules of international law.

2. A decision of the Joint Committee declaring its interpretation of a provision of this Agreement under Article 20.1.2 shall be binding on a tribunal established under this Section, and any award must be consistent with that decision.

**ARTICLE 15.22: INTERPRETATION OF ANNEXES**

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Joint Committee on the issue. The Joint Committee shall submit in writing any decision declaring its interpretation under Article 20.1.2 to the tribunal within 60 days of delivery of the request.

2. A decision issued by the Joint Committee under paragraph 1 shall be binding on the tribunal, and any award must be consistent with that decision. If the Joint Committee fails to issue such a decision within 60 days, the tribunal shall decide the issue.

**ARTICLE 15.23: EXPERT REPORTS**

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

**ARTICLE 15.24: CONSOLIDATION**

1. Where two or more claims have been submitted separately to arbitration under Article 15.15(1) and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:

(a) one arbitrator appointed by agreement of the claimants;

(b) one arbitrator appointed by the respondent; and

(c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of either Party.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of the non-disputing Party.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 15.15(1) have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or

(c) instruct a tribunal previously established under Article 15.18 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that

(i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 15.15(1) and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 15.18 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 15.18 be stayed, unless the latter tribunal has already adjourned its proceedings.

**ARTICLE 15.25: AWARDS**

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest;

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorneys' fees in accordance with this Section and the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 15.15(1)(b):

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

3. A tribunal may not award punitive damages.

4. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

5. Subject to paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

6. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 15.15(3)(d)

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award, or

(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

7. Each Party shall provide for the enforcement of an award in its territory.

8. If the respondent fails to abide by or comply with a final award, on delivery of a written notification by the non-disputing Party, a panel shall be established under Article 20.4.4(a). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) in accordance with the procedures set forth in Article 20.4.5(b), a recommendation that the respondent abide by or comply with the final award.

9. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 8.

10. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

**ARTICLE 15.26: STATUS OF LETTER EXCHANGES**

The following letters exchanged this day on:

(a) Customary International Law;

(b) Expropriation;

(c) Land Expropriation; and

(d) Appellate Mechanism

shall form an integral part of the Agreement.

**ARTICLE 15.27: SERVICE OF DOCUMENTS**

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 15-D.

DRAFT **March 7, 2003**

**Subject to Legal Review for Clarity and Consistency**

Dear ---------:

I have the honor to refer to Article 15.26(a) of the {Agreement} (the "Agreement") signed at {Place} this ---- day of {Month}, 2003.

During the negotiation of the Investment Chapter of the Agreement (Chapter 15), the Government of the United States of America and the Government of Singapore (collectively, the "Parties") discussed the term "customary international law" generally and with specific reference to Articles 15.5 and 15.6. Based on those discussions, I have the honor to confirm the Parties' shared understanding that customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 15.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

I have the honor to propose that this understanding be treated as an integral part of the Agreement.

I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Robert B. Zoellick

DRAFT **March 7, 2003**

**Subject to Legal Review for Clarity and Consistency**

Dear ----------:

I have the honor to confirm receipt of your letter, which reads as follows:

> QUOTE ENTIRE TEXT OF LETTER WITHIN QUOTES AND INDENTED.

I have the further honor to confirm that this understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,

George Yeo

DRAFT **March 7, 2003**

**Subject to Legal Review for Clarity and Consistency**

Dear ---------:

I have the honor to refer to the Article 15.26(b) of the{Agreement} (the "Agreement") signed at {Place} this ---- day of {Month}, 2003.

During the negotiation of the Investment Chapter of the Agreement (Chapter 15), the Government of the United States of America and the Government of Singapore (collectively, the "Parties") discussed Article 15.6(1) in order to clarify and reaffirm its meaning. Based on those discussions, I have the honor to confirm the Parties' shared understanding that:

1. Article 15.6(1) is intended to reflect customary international law concerning the obligation of States with respect to expropriation.

2. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

3. Article 15.6(1) addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

4. The second situation addressed by Article 15.6(1) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character of the government action.

(b) Except in rare circumstances, nondiscriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as

public health, safety, and the environment, do not constitute indirect expropriations.

I have the honor to propose that this understanding be treated as an integral part of the Agreement.

I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Robert B. Zoellick

Dear ----------:

I have the honor to confirm receipt of your letter, which reads as follows:

QUOTE ENTIRE TEXT OF LETTER WITHIN QUOTES AND INDENTED.

I have the further honor to confirm that this understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,

George Yeo

DRAFT **March 7, 2003**

**Subject to Legal Review for Clarity and Consistency**

Dear Ambassador Zoellick:

I have the honor to refer to Article 15.26(c) of the {Agreement} (the "Agreement") signed at {Place} this ---- day of {Month}, 2003.

During the negotiation of the Investment Chapter of the Agreement (Chapter 15), the Government of the United States of America and the Government of Singapore (collectively, the "Parties") discussed Article 15.6 and the Government of Singapore's land acquisition law. Based on those discussions, I have the honor to confirm the Parties' shared understanding that:

1. Singapore has no plans to expropriate any land of an investor of the United States or a covered investment. Singapore undertakes an obligation not to expropriate any land of a U.S. investor or a covered investment for three years after the Agreement enters into force.

2. There shall be recourse to the dispute settlement provisions of Chapters 15 and 20 of the Agreement if an investor of the United States or the United States files a claim that Singapore has breached the obligation in paragraph 1 of this letter. If Singapore is found to be in breach of the obligation in paragraph 1 of this letter, Singapore commits to pay the fair market value of the expropriated land, as provided in Article 15.6.

3. Paragraph 2 of this letter shall not take effect until the date on which the first claim is filed (under Articles 15.15 or 20.4) that alleges a breach of the obligation in paragraph 1 of this letter after the Agreement enters into force.

4. In relation to expropriation by Singapore of land of an investor of the United States or a covered investment, Article 15.6 shall not take effect until three years after the date of entry into force of the Agreement, unless prior to that time Singapore is found to be in breach of the obligation in paragraph 1 of this letter.

I have the honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

George Yeo

DRAFT **March 7, 2003**

**Subject to Legal Review for Clarity and Consistency**

Dear Minister Yeo:

I have the honor to confirm receipt of your letter, which reads as follows:

QUOTE ENTIRE TEXT OF LETTER WITHIN QUOTES AND INDENTED

In light of the unique circumstances in which Singapore finds itself, I have the further honor to confirm that this understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,

Robert B. Zoellick

## Annex 15-A
## Transfers

1. Where a claimant submits a claim alleging that Singapore has breached an obligation under Section B, other than Article 15.**4**, that arises from its imposition of restrictive measures with regard to outward payments and transfers, Section C shall apply except as modified below:

(a) claimant may submit the claim under Article 15.15 only after one year has elapsed since the measure was adopted.

(b) If the claim is submitted under Article 15.15(1)(b), the claimant may, on behalf of the enterprise, only seek damages with respect to the shares of the enterprise for which the claimant has a beneficial interest.

(c) Paragraph 1(a) shall not apply to claims that arise from restrictions on:

(i) payments or transfers on current transactions, including the transfer of profits and dividends of foreign direct investment by investors of the United States;

(ii) transfers of proceeds of foreign direct investment by investors of the United States, excluding investments designed with the purpose of gaining direct or indirect access to the financial market; or

(iii) payments pursuant to a loan or bond[15-13] regardless of where it is issued, including inter- and intra-company debt financing between affiliated enterprises, when such payments are made exclusively for the conduct, operation, management, or expansion of such affiliated enterprises, provided that these payments are made in accordance with the maturity date agreed on in the loan or bond agreement.

(d) Excluding restrictive measures referred to in paragraph 1(c), Singapore shall incur no liability, and shall not be subject to claims, for damages arising from its imposition of restrictive measures with regard to outward payments and transfers that were incurred within one year from the date on which restrictions were imposed, provided that such restrictive measures do not substantially impede transfers.

[15-13]For greater certainty, payments pursuant to a loan or bond shall exclude capital account transactions relating to inter-bank loans, including loans to or from Singapore licensed banks, merchant banks, or finance companies.

(e) Claims arising from Singapore's imposition of restrictive measures with regard to outward payments and transfers shall not be subject to Article 15.24 unless Singapore consents.

2. The United States may not request the establishment of an arbitral panel under Chapter 20 relating to Singapore's imposition of restrictive measures with regard to outward payments and transfers until one year has elapsed since the measure was adopted. In determining whether compensation is owed or benefits should be suspended, or the level of such compensation or suspension, pursuant to Article 20.6, the aggrieved Party and the panel shall consider whether the restrictive measures were implemented at the request of the International Monetary Fund (IMF).

DRAFT **March 7, 2003**

**Subject to Legal Review for Clarity and Consistency**

Dear ---------:

I have the honor to refer to Article 15.26(d) of the {Agreement} (the "Agreement") signed at {Place} this ---- day of {Month}, 2003.

During the negotiation of the Investment Chapter of the Agreement (Chapter 15), the Government of the United States of America and the Government of Singapore (collectively, the "Parties") discussed the possibility of establishing a bilateral appellate mechanism to review awards rendered by tribunals under that Chapter. Based on those discussions, I have the honor to confirm the Parties' shared understanding that, within three years after the date of entry into force of this Agreement, the Parties shall consider whether to establish a bilateral appellate body or similar mechanism to review awards rendered under Article 15.25 in arbitrations commenced after they establish the appellate body or similar mechanism.

I have the honor to propose that this understanding be treated as an integral part of the Agreement.

I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Robert B. Zoellick

DRAFT **March 7, 2003**

**Subject to Legal Review for Clarity and Consistency**

Dear ----------:

I have the honor to confirm receipt of your letter, which reads as follows:

QUOTE ENTIRE TEXT OF LETTER WITHIN QUOTES AND INDENTED

I have the further honor to confirm that this understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,

George Yeo

## Annex 15-B
## Performance Requirements

Article15.8(1) does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement. For purposes of this Annex, private parties may include designated monopolies or government enterprises, where such entities are not exercising delegated governmental authority as described in Articles 12.3(1)(c)(i) and 12.3(2)(b), respectively.

## Annex 15-C
## Performance Requirements

### Singapore

With respect to Singapore, Article 15.8(1)(f) does not apply with respect to the sale or other disposition of an investment of an investor of a non-Party in its territory.

## Annex 15-D
## Service of Documents on a Party Under Section C

### Singapore

Notices and other documents in disputes under Section C shall be served on Singapore by delivery to:

Director (Trade Division)
Ministry of Trade and Industry
100 High Street, #09-01
The Treasury
Singapore 179434

### United States

Notices and other documents in disputes under Section C shall be served on the United States by delivery to:

Executive Director (L/EX)
Office of the Legal Adviser
Department of State
Washington, DC 20520
United States of America

DRAFT **March 7, 2003**

**Subject to Legal Review for Clarity and Consistency**

Dear Minister Yeo:

I have the honor to confirm the following with regard to the denial of benefits clauses set out in Article 8.11.1(a), Article 15.11(a), and incorporated by reference in Article 10.1.2(a) of the Free Trade Agreement between our two Governments signed on this day.

United States legislation regarding the imposition of trade and economic sanctions against foreign countries is set out in certain federal statutes passed by the U.S. Congress. The United States wishes to clarify that such sanctions legislation does not impinge on Singapore's sovereign right to conduct its foreign policy nor does it prohibit companies of foreign countries that are subject to U.S. sanctions from establishing themselves in Singapore.

The United States Department of Treasury's Office of Foreign Assets Control ("OFAC") and the United States Department of Commerce's Bureau of Industry and Security ("BIS") administer the principal U.S. trade and economic sanctions. OFAC administers and enforces economic and trade sanctions against foreign countries, as well as entities and individuals identified on a list of "Specially Designated Nationals." BIS administers and enforces controls on exports and re-exports of dual-use items to certain countries and entities for national security and foreign policy reasons. In addition, individuals and companies subject to export restrictions are identified on "Denied Persons" and "Denied Entities" lists. Comprehensive, up-to-date information on U.S. economic and trade sanctions can be obtained through the OFAC and BIS websites and through publications in the *Federal Register*.

Article 20.03 of the Free Trade Agreement provides that either Party may request consultations with respect to any matter that it considers might affect the operation of the Free Trade Agreement, including how the trade and economic sanctions of the other Party might affect the operation of the Free Trade Agreement.

I trust that this letter provides the assurances that Singapore has sought with regard to the Free Trade Agreement's denial of benefits provisions.

Sincerely,

Robert B. Zoellick

DRAFT **March 7, 2003**

**Subject to Legal Review for Clarity and Consistency**

Mr Koh Yong Guan
Managing Director
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Dear Mr. Koh:

I am pleased that our Governments have been able to reach agreement on the following principles, with respect to Annex 15-A of the Free Trade Agreement between our Governments signed on this day. It is the intent of both Parties that this letter provide interpretative guidance for any dispute settlement panel that considers any issue addressed in this letter, and that any such panel must decide such issues in accordance with the principles contained herein.

First, without attempting to exhaustively define the term "substantially impede transfers," we agree, as a rebuttable presumption, that restrictive measures on outward payments and transfers will be deemed not to substantially impede transfers, if they are applied on a national treatment and most-favored-nation basis, are price-based, are not confiscatory, do not effectively prohibit or ban transfers over any period of time,[15-14] do not constitute a dual or multiple exchange rate practice, do not restrict the sale or conversion of the assets to any other asset denominated in Singapore dollars, and do not otherwise interfere with the investor's ability to earn a market rate of return in Singapore on the restricted assets. A measure will not be deemed to substantially impede transfers by virtue of the fact that it relies on approval procedures for outward payments and transfers, provided the approval procedures are based on objective and transparent rules, and investors have an alternative means of making payments and transfers through a price-based mechanism.

Second, if a measure is found to "substantially impede transfers," the investor will have the burden of proving the existence and extent of diminution in its asset value as a consequence of the measure. If an investor can only speculate that the exchange rate would have been more favorable on the date when it was prepared to transfer its funds than when the funds were transferred, and Singapore presents evidence that the exchange rate could have been even less favorable at that time had the measure not been imposed, the investor has not met its burden of proof.

[15-14] Restrictive measures will be deemed not to effectively prohibit or ban transfers if a reasonable investor could have made outward payments and transfers.

Third, if a measure substantially impedes transfers, it shall not prevent investors from earning a market rate of return in Singapore on any restricted assets. The investor, in turn, is obligated to mitigate damages, and cannot recover to the extent it was afforded a reasonable opportunity to mitigate its losses. Moreover, so long as Singapore has afforded investors a reasonable opportunity to mitigate their losses by investing in other Singapore dollar denominated assets during the first year that transfers of any assets are restricted, investors will not be able to recover their alleged opportunity costs from forgoing alternative investments.

I appreciate your assistance and that of your staff in resolving this issue.

Sincerely,

John B. Taylor
Undersecretary for International Affairs